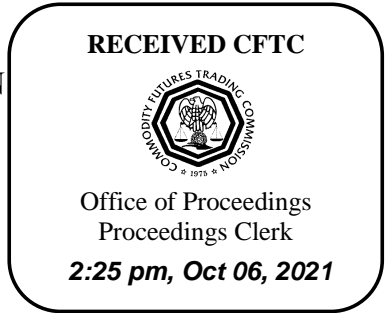


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



_____))
In the Matter of:))
))
ICE Clear Europe Limited,) **CFTC Docket No. 22-01**
))
Respondent.))
_____))

ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6b OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from February 17, 2015 through August 12, 2019 (“Relevant Period”), Respondent ICE Clear Europe Limited (“Respondent” or “ICEU”) violated Commission Regulations (“Regulation”) 1.20(g)(4) and 39.15(a), (b)(1), and (c), 17 C.F.R. §§ 1.20(g)(4), 39.15(a), (b)(1), (c) (2020). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6b of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

Effective January 2014, the Commission enhanced protection of customer funds by requiring derivatives clearing organizations (“DCOs”) to obtain written acknowledgment template letters from a bank or trust company (“a depository”) stating that the depository was informed that funds deposited are customer funds being held in accordance with the Act and restricting use of such funds.² During the Relevant Period, ICEU, a DCO, did not obtain executed acknowledgment letters from the depository for six customer segregated accounts, two of which were funded, out of a total of 136 accounts that were open during the Relevant Period, and thus failed to meet the requirements of Regulations 1.20(g)(4) and 39.15(b)(1) and (c), 17 C.F.R. §§ 1.20(g)(4), 39.15 (b)(1), (c), (2020). ICEU also failed to have adequate standards and procedures designed to protect and ensure the safety and assets belonging to clearing members and their customers, as required by Regulation 39.15(a), 17 C.F.R. § 39.15(a) (2020).

In accepting Respondent’s Offer, the Commission recognizes the self-reporting and substantial cooperation of ICEU in connection with the Division of Enforcement’s (“Division”) investigation of this matter. The Commission also acknowledges Respondent’s representations concerning its remediation in connection with this matter. The Commission’s recognition of Respondent’s self-reporting, substantial cooperation, and appropriate remediation is reflected in the form of a substantially reduced penalty.

B. RESPONDENT

ICE Clear Europe Limited is a private limited company organized under the laws of England and Wales. Since 2010, ICEU has been registered with the Commission as a DCO under Section 5b of the Commodity Exchange Act (“Act”), 7 U.S.C. § 7a-1(a) (2018).

C. FACTS

During the Relevant Period, ICEU held 136 futures customer funds accounts, of which six accounts (“Accounts”) were opened without obtaining required written acknowledgments from the depository, Bank A, prior to or contemporaneously with the opening of those Accounts—or at any time thereafter—confirming that the Accounts held money, securities, or other property of customers. Four of the six Accounts were never funded or used. DCOs may deposit futures customer funds with a bank or trust company but must obtain from each depository written acknowledgment letters in the form set out in Appendix B to Regulation 1.20, 17 C.F.R. § 1.20, app. B (2020), and otherwise meeting the specific requirements set forth in the

² See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 Fed. Reg. 68501, 68507 (Nov. 14, 2013).

Commission's Regulations. The required acknowledgment letters are intended to provide legal certainty as to the rights and obligations of the parties under the Act and Regulations.³

Two of the Accounts, opened by ICEU in April 2018 and May 2019, held customer funds in connection with tri-party reverse repurchase transactions pursuant to an investment services agreement with Bank B. In aggregate, the two funded Accounts collectively held more than \$500 million at one point. The other four accounts, variously opened in 2015 or 2017, never held customer funds. The respective title for each of the six Accounts clearly identified them as futures customer funds, and none of the Accounts were used to hold funds belonging to ICEU, Bank B, or anyone other than Respondent's customers.

ICEU first identified the missing acknowledgment letters on or around August 1, 2019, when, as part of ICEU's quarterly acknowledgment letter review process, a compliance staff member identified discrepancies in ICEU's internal lists of futures customer funds accounts as compared to those identified by Bank B in its acknowledgment letters. ICEU conducted an internal review of all open accounts and confirmed that it had not obtained acknowledgment letters for each of the six Accounts. In that same review, ICEU confirmed it had obtained and filed acknowledgment letters for all of the other 130 accounts. ICEU closed all six of the Accounts on or before August 12, 2019. ICEU also identified deficiencies in its standards and procedures, which did not reconcile ICEU's list of futures customer funds accounts to the list of those maintained by its custodial firms.

ICEU subsequently self-reported the violations to the Commission and represented that it engaged in remedial measures, most notably by updating relevant ICEU standards and procedures and providing enhanced training. Further, Respondent has fully cooperated with and materially advanced the Division's investigation, such as by fully sharing information and documents identified through its internal investigation, and making ICEU executives available to provide information regarding additional internal controls ICEU added to its account opening policies and procedures.

III. LEGAL DISCUSSION

A. ICEU Did Not Obtain Written Acknowledgment Letters for Six Futures Accounts in Violation of Regulations 1.20(g)(4) and 39.15

As a registered DCO, Respondent is required to comply with Commission regulations relating to the safe handling and treatment of customer funds set forth in Regulation 39.15, 17 C.F.R. § 39.15 (2020). Regulation 39.15(b)(1) requires DCOs to comply with the applicable segregation requirements of Section 4d of the Act, 7 U.S.C. § 6d (2018), which incorporates Regulation 1.20(g)(4), 17 C.F.R. § 1.20(g)(4) (2020). Although Regulation 39.15 was recently amended with more specific requirements regarding segregation and commingling of futures, options, and swaps, those changes did not affect the acknowledgment letter requirement or Regulation 1.20(g)(4).⁴ Further, Regulation 39.15(c) requires DCOs to hold those funds and

³ *Id.* at 68534.

⁴ Subsequent to the Relevant Period for the conduct in this matter, the Commission amended Regulation 39.15 on January 27, 2020, to include different requirements for DCO segregation. The new rule, which

assets in a manner that minimizes the risk of loss or delay in access by the DCO to such funds and assets.

Regulation 1.20(g)(4) requires DCOs to obtain a written acknowledgment letter from each depository “prior to or contemporaneously with the opening of a futures customer funds account” in the form and manner specified by the Commission. The letter must be in the form set out in Appendix B to Part 1.20, and is required to contain, among other things, the depository’s acknowledgment that the account contains customer funds that must be separately accounted for and segregated from other deposits, and must otherwise be treated in accordance with customer fund protections contained in Section 4d of the Act.

During the Relevant Period, ICEU opened and maintained six Accounts, two of which were funded, that did not have an executed acknowledgment letter in place as required by Regulations 39.15(b)(1) and 1.20(g)(4) and were not held in a manner consistent with Regulation 39.15(c).

Additionally, Regulation 39.15(a) requires DCOs to establish standards and procedures designed to protect and ensure the safety of funds and assets belonging to clearing members and their customers. Such standards and procedures should include customer fund protections contained in Regulations 1.20(g)(4), 39.15(b)(1), and 39.15(c).

ICEU’s standards and procedures during the Relevant Period were deficient in that they did not adequately reconcile its list of futures customer funds accounts to the list of those maintained by its custodial firms.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, the Respondent violated Regulations 1.20(g)(4) and 39.15(a), (b)(1), and (c), 17 C.F.R. §§ 1.20(g)(4), 39.15(a), (b)(1), (c) (2020).

V. OFFER OF SETTLEMENT

Respondent has submitted an Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

more broadly addresses segregation and commingling of futures, options, and swaps, became effective on February 26, 2020, with a compliance date of January 27, 2021. *See* Derivatives Clearing Organization General Provisions and Core Principles, 85 Fed. Reg. 4800 (Jan. 27, 2020).

- C. Waives:
1. The filing and service of a complaint and notice of hearing;
 2. A hearing;
 3. All post-hearing procedures;
 4. Judicial review by any court;
 5. Any and all objections to participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. Any and all claims that it may possess under the Equal Access to Justice Act; 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2020), relating to, or arising from, this proceeding;
 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 8. Any claims of Double Jeopardy based on the institution of this proceeding or entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent violated Regulations 1.20(g)(4) and 39.15(a), (b)(1), and (c), 17 C.F.R. §§ 1.20(g)(4), 39.15(a), (b)(1), (c) (2020);
 2. Orders Respondent and its successors and assigns to cease and desist from violating Regulations 1.20(g)(4) and 39.15(a), (b)(1), and (c);
 3. Orders Respondent to pay a civil monetary penalty in the amount of four hundred fifty thousand dollars (\$450,000), plus any post-judgment interest; and
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept Respondent's Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent and its successors and assigns shall cease and desist from violating Regulations 1.20(g)(4) and 39.15 (a), (b)(1), and (c), 17 C.F.R. §§ 1.20(g)(4), 39.15(a), (b)(1), (c) (2020).
- B. Respondent shall pay a civil monetary penalty in the amount of four hundred fifty thousand dollars (\$450,000) (“CMP Obligation”) within ten days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2018).

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
C/O ESC/AMK-326; RM 265
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 - 1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents, or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent’s: (i) testimonial obligations; or (ii) right to take legal positions in other

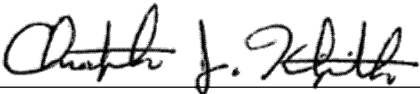
proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

2. Cooperation: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
3. Partial Satisfaction: Responder understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
4. Change of Address/Phone: Until such time as Respondent satisfied in full its CMP Obligation as set forth in the Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.
5. Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Legal Division
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: October 6, 2021